

रजिस्टर्ड नं० एस० एम० 14.



# राजपत्र, हिमाचल प्रदेश

## (असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, शनिवार, 19 अक्टूबर, 1974/27 अश्विन, 1896

**GOVERNMENT OF HIMACHAL PRADESH**

**GOVERNOR'S SECRETARIAT HIMACHAL PRADESH**

**NOTIFICATION**

*Simla-4, the 11th October, 1974*

No. 33-57/73-GS (9).—Whereas on a petition presented by Sarvshri Madhvindra Sharma and Madan Gopal Chitkara, Advocates, Simla, before the Governor of Himachal Pradesh, a question arose within the meaning of Article 192(1) of the Constitution whether Shri Lal Chand Prarthi, Forest Minister, H. P., a Member of the H. P. Vidhan Sabha, has incurred a disqualification under Article 191 of the

Constitution for being a Member of the said Vidhan Sabha by accepting the office of the Chairman of the H. P. Housing Board ;

And whereas, the Governor referred the said question for the opinion of the Election Commission as required under Article 192 (2) of the Constitution ;

And whereas, the Election Commission has since tendered its opinion, appended below, on the said question ;

Now, therefore, the Governor acting according to the said opinion of the Election Commission is pleased to hold that Shri Lal Chand Prarthi has incurred no such disqualification as alleged in the petition of Sarvshri Madhvindra Sharma and Madan Gopal Chitkara and is further pleased to dismiss the said petition.

R. K. ANAND,  
*Secretary.*

### CHIEF ELECTION COMMISSIONER OF INDIA

#### OPINION

This is a reference under Article 192 of the Constitution from the Governor of Himachal Pradesh arising out of the joint petition presented before him by Shri Madan Gopal Chitkara and Shri Madhvindra Sharma, Advocate, Simla.

The petitioners allege that the respondent Shri Lal Chand Prarthi, Minister of Housing, Himachal Pradesh, and an elected member of the Legislative Assembly of Himachal Pradesh, has incurred a disqualification for being a Member of that Assembly for the reason that he is holding the office of the Chairman of the Housing Board, Himachal Pradesh by virtue of the notification No. 8-13/72-DP (Apptt.) of that Government dated 31 July, 1972 and that this office is an office of profit under the State Government. According to the petitioners, section 7 (1) of the Himachal Pradesh Housing Board Act, 1972 authorises payment of such remuneration and allowances to the Chairman of the Housing Board as may, from time to time, be fixed by the Government. The petitioners also allege that the Legislative Assembly of Himachal Pradesh has not declared by law that the holders of the said office would not be disqualified for being chosen as, and for being, a member of the Legislative Assembly of Himachal Pradesh.

The Commission issued a notice to Shri Prarthi on 8 July, 1974, directing him to file a written statement supported by an affidavit in proper form replying to the allegations contained in the petition. The petitioners were also directed by a notice dated 8 July, 1974, to file necessary affidavits and produce necessary documents on or before 1 August, 1974 in support of the allegations contained in their petition to the Governor. When they failed to comply with the direction in that notice by 1 August, 1974, they were reminded. The petitioners have not cared to reply so far. A copy each of the Himachal Pradesh Housing Board Act, 1974, the rules thereunder and the notification dated 31 July, 1972, wherein the appointment of Shri Lal Chand Prarthi under section 3 (4) of the Himachal Pradesh Housing Board Act, 1972 as Chairman of the Board has been notified, were also obtained through the Governor of Himachal Pradesh.

In his reply, supported by an affidavit, Shri Prarthi has admitted that he has been appointed by the Governor as Chairman of the Housing Board, Himachal Pradesh. He has however denied that he is holding an office of profit. According to him,

no emoluments, or remunerations were fixed by the Government or attached to the office. He further points out that the Himachal Pradesh Legislative Assembly Members (Removal of Disqualifications) Act, 1971 (Act No. 7 of 1971) gives protection and exemption of him from any disqualification and that section 3 (m) of that Act specifically enables him to receive remuneration in the shape of compensatory allowance though he had not received even any such allowance. Shri Prarthi has also enclosed an affidavit from the Secretary-cum-Chief Engineer, Housing Board, Simla to the effect that no remuneration or profit in any shape or form has been attached to the office of Chairman, Housing Board held by Shri Prarthi and that he has not been paid any compensatory allowance such as T.A. or D.A. or any other kind of remuneration from the funds of the Himachal Pradesh Housing Board at any time.

Shri Lal Chand Prarthi has also raised a preliminary objection to the effect that the petition itself is barred by the provisions of the Himachal Pradesh Legislative Assembly Members (Removal of Disqualifications) Act, 1971 (Act No. 7 of 1971).

There is no dispute about the fact that Shri Prarthi is holding the position of Chairman, Housing Board, Himachal Pradesh from 31 July, 1972. There is also no dispute about the office being held by Shri Prarthi an *ex-officio* capacity as Minister of Himachal Pradesh or by name. The simple question for my consideration therefore is whether Shri Prarthi holding any office of profit under the Government of India or the Government of any State other than an office declared by the Legislature of the State by law not to disqualify its holder, within the purview of sub-clause (a) of clause (1) Article 191 of the Constitution. Section 3 (b) and (m) of the Himachal Pradesh Legislative Assembly Members (Removal of Disqualifications) Act, 1971 (Act No. 7 of 1971) reads :

"3. *Prevention of disqualifications for membership of the Legislative Assembly of Himachal Pradesh.*—A person shall not be disqualified for being chosen as, and for being, a member of the Himachal Pradesh Legislative Assembly by reason only of the fact that he holds any of the following offices of profit under the Government of India or the Government of any State :—

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(b) any office held by a Minister, Minister of State, or Deputy Minister whether *ex-officio* or by name ;

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(m) the office of Chairman or Vice-Chairman, Director or Member of any statutory or non-statutory body other than any such body as is referred to in clause (1) of the holder of such office is not entitled to any remuneration other than compensatory allowance. "

Examining the case of Shri Lal Chand Prarthi, now before the Commission with reference to the above provisions, it is clear that even assuming that Shri Lal Chand Prarthi is holding an office of profit by virtue of his position as Chairman of the Housing Board, Himachal Pradesh, Simla he is holding it in *ex-officio* capacity as Minister and that therefore he is saved from any disqualification in that regard by virtue of the clear provisions of section 3 (b) of the Act referred to above. In this view of the matter it becomes unnecessary for the Commission to go into the question whether section 3 (m) of that Act is also applicable to the case of Shri Prarthi.

For the reasons stated above, the Commission holds, and accordingly tenders opinion to the Governor of Himachal Pradesh, that Shri Lal Chand Prarthi has not

incurred any disqualification under Article 191 of the Constitution for being a Member of the Legislative Assembly of Himachal Pradesh.

-Sd/- T. SWAMINATHAN,  
Chief Election Commissioner of India.

NEW DELHI :  
Dated 27 September, 1974.